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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 SUCCESSFACTORS, INC, a Delaware
corporation,

13 Plaintiff,

14 vs.

15 SOFTSCAPE, INC., a Delaware corporation,
16 and DOES 1-10, inclusive,

17 Defendants.

Case No. CV 08-1376 CW (BZ)

**MOTION FOR ADMINISTRATIVE
RELIEF TO FILE PORTIONS OF
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL
AND THE DECLARATION OF
JEFFREY M. RATINOFF IN SUPPORT
THEREOF UNDER SEAL**

Date: September 3, 2008

Time: 10:00 a.m.

Judge: Honorable Bernard Zimmerman

Location: Courtroom G 15th Floor

Complaint filed: March 11, 2008

Trial Date: June 1, 2009

Judge: Honorable Bernard Zimmerman

Pursuant to the Protective Order in this case (Docket No. 89), Civil L.R. 7-11 and 79-5, Defendant Softscape, Inc. ("Softscape") hereby moves the Court for an Order permitting Softscape to file the following under seal with the Court:

- Lines 18-19 on Page 1 of the Declaration of Jeffrey M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion to Compel ("Ratinoff Declaration").
- The following portions of Exhibit E to the Ratinoff Declaration: 111:22-25; 112:1-15, 112:19; 154:19-25; 236:5-10, 236:16-25; 411:7-10; 412:6-18; 413:11-25; 414:1-18, 414:24-415:4, 415:7-18, 415:20-22; 416:17-22; and 418:20-25.
- Part of Page 1 of Exhibit H to the Ratinoff Declaration.
- Parts of Pages 2 and 4 of Exhibit I to the Ratinoff Declaration.
- The following portions of Defendant's Opposition to Plaintiff's Motion to Compel: 14:6-9, 15:13-14, 15:19-24, 16:13-14, 16:20-17:1, 17:24-26.

The above portions of the Ratinoff Declaration and Defendant's Opposition to Plaintiff's Motion to Compel contain information produced or disclosed by Softscape during discovery that it designated under the Protective Order because it constitutes confidential and proprietary information about Softscape's customers and its business.

Further, pursuant to the Protective Order in this case, Civil L.R. 7-11 and 79-5, Defendant Softscape, Inc. ("Softscape") hereby moves the Court for an Order permitting Softscape to file the following under seal with this Court:

- Portions of Exhibit A to the Ratinoff Declaration.
- Exhibit B to the Ratinoff Declaration.
- The following portions of Defendant's Opposition to Plaintiff's Motion to Compel: 6:14-18, 9:11, 9:15-17, 9:19-20, 10:8-9, 12:4, 12:17, 22:27-28.

The above portions of the Ratinoff Declaration and Defendant's Opposition to the Motion to Compel contain information that was designated under the Protective Order by SuccessFactors because such information purportedly pertains to SuccessFactors' sensitive customer information, personal information, and/or business practices.

Softscape is filing redacted versions of these documents in a manner that is narrowly tailored to protect the aforementioned confidential information, while minimizing the infringement of the public's right of access to documents filed with the Court. Accordingly, Softscape

1 respectfully requests that the Court allow it to file the above-identified portions of the Ratinoff
2 Declaration and Defendant's Opposition to Plaintiff's Motion to Compel under seal in accordance
3 with the Protective Order and Civil L.R. 79-5.

4 Dated: August 13, 2008 Respectfully submitted,

5 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO P.C.

6 /s/ Jeffrey M. Ratinoff

7 By: JEFFREY M. RATINOFF
8 Attorneys for Defendant,
9 SOFTSCAPE, INC.

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
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12 SUCCESSFACTORS, INC, a Delaware
corporation,

13 Plaintiff,

14 vs.

15 SOFTSCAPE, INC., a Delaware corporation,
16 and DOES 1-10, inclusive,

17 Defendants.

Case No. CV 08-1376 CW (BZ)

**DECLARATION OF JEFFREY M.
RATINOFF IN SUPPORT OF MOTION
FOR ADMINISTRATIVE RELIEF TO
FILE PORTIONS OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL AND THE
DECLARATION OF JEFFREY M.
RATINOFF IN SUPPORT THEREOF**

18 Date: September 3, 2008

19 Time: 10:00 a.m.

Judge: Honorable Bernard Zimmerman

20 Location: Courtroom G 15th Floor

21 Complaint filed: March 11, 2008

22 Trial Date: June 1, 2009

1 I, Jeffrey M. Ratinoff, declare:

2 1. I am an attorney licensed to practice law before all courts in the State of California,
3 and the United States District Court for the Northern District of California. I am Of Counsel with
4 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz Levin") in its Palo Alto, CA office
5 and I, along with other attorneys at Mintz Levin, and Ronald M. Davids, are attorneys of record for
6 Defendant Softscape, Inc. (hereinafter "Softscape" or "Defendant"). I submit this declaration in
7 support of Softscape's Motion for Administrative Relief to File Under Seal Declaration of Jeffrey
8 M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion to Compel.

9 2. I have personal knowledge of the matters set forth herein except as to those matters
10 set forth on information and belief, and as to those I am informed and believe them to be true and
11 could and would competently testify thereto.

12 3. On April 23, 2008, the Court entered a Protective Order in this case. Pursuant to
13 Section 10 of that order, any documents filed in this action containing confidential information must
14 be filed under seal in accordance with Civil Local Rule 79-5.

15 4. Accordingly, SuccessFactors requested that it be allowed to file under seal the
16 following portions of the Memorandum of Points and Authorities ("Motion to Compel Brief") and
17 Exhibits to the Declaration of Jeffrey M. Ratinoff ("Ratinoff Declaration") in Support of
18 SuccessFactors' Motion to Compel Production of Documents, Further Interrogatory Answers and
19 Proper Confidentiality Designations.

20 5. Under the terms of the Protective Order, Softscape designated lines 18-19 on Page 1
21 of the Declaration of Jeffrey M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion
22 to Compel ("Ratinoff Declaration") as "Highly Confidential - Outside Attorneys' Eyes Only"
23 because it refers to information disclosed by Softscape during the Deposition of David Watkins and
24 was designated as such under the Protective Order because disclosure of this information would
25 create a substantial risk of competitive harm or serious injury to Softscape as it contains highly
26 confidential information about acts involving a competitor. The Court has previously permitted
27 Softscape to file this information under seal. (*See* Docket No. 148). In addition, Softscape refers to
28 this information at Page/Lines 16:13-14 of its Opposition to Plaintiff's Motion to Compel Brief.

1 Consistent with the Court's prior order, Softscape therefore requests that these portions of its
2 Opposition and the above portions of the Ratinoff Declaration be filed under seal.

3 6. Under the terms of the Protective Order, Softscape designated Pages/Lines 111:22-
4 112:8, 112:11-15, 112:19, 154:19-25, 411:7-10, 412:6-18, 413:11-414:18, 414:24-415:4, 415:7-18,
5 415:20-22, 416:17-22, and 418:20-25 of Exhibit E to the Ratinoff Declaration as "Highly
6 Confidential—Attorneys' Eyes Only" because they contain the disclosure and discussion of
7 confidential internal marketing information, competitive business strategies, confidential customer
8 information and related trade secrets, as well as internal Softscape employee information and
9 personal information about third parties, the disclosure of which could create a substantial risk of
10 competitive harm to Softscape and/or those third parties, which can be avoided by maintaining the
11 confidential nature of the information. Softscape refers to this information at Pages/Lines 14:6-9,
12 15:22-24, 16:20-17:1, 17:24-26 of its Opposition to Plaintiff's Motion to Compel. Plaintiff requests
13 that these portions of its Opposition and the above portions of Exhibit E to the Ratinoff Declaration
14 be filed under seal.

15 7. Softscape further designated Page/Lines 112:9-10 of Exhibit E to the Ratinoff
16 Declaration as "Confidential" under the Protective Order. This information is confidential because
17 the testimony discloses information relating to internal operational information of Softscape and
18 Softscape would not normally reveal this information to third parties except in confidence and
19 would undertake measures with others (if information was disclosed) to maintain its confidence. .
20 Plaintiff requests that the above portion of Exhibit E to the Ratinoff Declaration be filed under seal.

21 8. This information is confidential because it pertains to private information of which is
22 not known outside of the entity and would not normally be revealed this information to third parties
23 except in confidence and would undertake measures with others (if information was disclosed) to
24 maintain its confidence. The Court has previously permitted Softscape to file this information
25 under seal. (*See* Docket No. 148). Softscape refers to this information at Pages/Lines 15:13-14 of
26 its Opposition to Plaintiff's Motion to Compel. Plaintiff requests that these portions of its
27 Opposition and the above portions of Exhibit E to the Ratinoff Declaration be filed under seal.

28 9. Softscape further designated Pages/Lines 236:5-10 and 236:16-15 of Exhibit E to the

1 Ratinoff Declaration as “Confidential” under the Protective Order. This information is confidential
2 because it pertains to private information of a third party entity, New Millenium Shoe, which is not
3 known outside of the entity and would not normally be revealed this information to third parties
4 except in confidence and would undertake measures with others (if information was disclosed) to
5 maintain its confidence. The Court has previously permitted Softscape to file this information
6 under seal. (*See* Docket No. 148). Softscape refers to this information at Pages/Lines 15:13-14 of
7 its Opposition to Plaintiff’s Motion to Compel. Plaintiff requests that these portions of its
8 Opposition and the above portions of Exhibit E to the Ratinoff Declaration be filed under seal.

9 10. Under the terms of the Protective Order, Softscape designated part of Page 1 of
10 Exhibit H to the Ratinoff Declaration as “Confidential” under the protective because it constitutes
11 confidential and proprietary information about Softscape’s internal operation and its business
12 practices and Softscape would not normally reveal this information to third parties except in
13 confidence and would undertake measures with others (if information was disclosed) to maintain its
14 confidence. Softscape requests that the above portions of Exhibit H to the Ratinoff Declaration be
15 filed under seal.

16 11. Under the terms of the Protective Order, Softscape redacted Pages/Lines 15:13-14,
17 15:19-21 of its Opposition to Plaintiff’s Motion to Compel because it refers to and/or discloses
18 information attached the Declaration of Henry Z. Carbajal III (“Carbajal Declaration”) in Support of
19 SuccessFactors’ Motion to Compel that is already the subject of SuccessFactors’ Administrative
20 Request to File Under Seal (Docket Nos. 179-180) and Softscape’s Declaration of Bryan J. Sinclair
21 (Docket Nos. 183, 183-2). Softscape incorporates that declaration by reference as the basis for
22 filing these portions of its brief under seal.

23 12. Under the terms of the Protective Order, both Softscape and SuccessFactors
24 designated portions of Pages 2 and 4 of Exhibit I to the Ratinoff Declaration as “Highly
25 Confidential - Attorneys’ Eyes Only” because it constitutes confidential and proprietary information
26 about their respective customers and businesses. To the extent that such information constitutes
27 Softscape’s confidential and proprietary information, disclosure of this information would create a
28 substantial risk of competitive harm or serious injury to Softscape which can be avoided my

1 maintaining the confidential nature of the information. Softscape requests that the above portions of
2 Exhibit I to the Ratinoff Declaration be filed under seal.

3 13. Under the terms of the Protective Order, SuccessFactors designated portions of
4 Exhibit A as "Highly Confidential - Attorneys' Eyes Only." Under the terms of the Protective
5 Order, SuccessFactors designated Exhibit B, which constitutes the deposition testimony of
6 SuccessFactors' Rule 30(b)(6) witness as "Highly Confidential - Outside Attorneys' Eyes Only." In
7 addition, Softscape refers to this information at 6:14-18, 9:11, 9:15-17, 9:19-20, 10:8-9, 12:4, 12:17,
8 22:27-28 of its Opposition to Plaintiff's Motion to Compel Brief. Thus, Softscape requests that
9 these portions of Defendants' Opposition to Plaintiff's Motion to Compel, and portions of Exhibits
10 A and all of Exhibit B to the Ratinoff Declaration be filed under seal.

11 14. Softscape is lodging with the Clerk unredacted, sealed copies of the above
12 documents. The publicly filed versions of these documents are redacted in a manner that is
13 narrowly tailored to protect the aforementioned confidential information, while minimizing the
14 infringement of the public's right of access to documents filed with the Court.

15 15. Softscape will notify counsel for SuccessFactors of their obligation under Civil L.R.
16 79-5(d) to file a declaration supporting the confidentiality of its information listed Paragraph 11
17 above.

18 16. Pursuant to Civil L.R. 79-5, Softscape intends to file publicly or withdraw from the
19 record any document that it requested to be filed under seal based on confidentiality designations if
20 Softscape withdraws those designations or if the Court denies Softscape's Motion to Seal.

21 I declare under penalty of perjury, under the laws of the State of California that the foregoing is
22 true and correct, and that this declaration was executed in Palo Alto, California.

23 Dated: August 13, 2008

/s/ Jeffrey M. Ratinoff

JEFFREY M. RATINOFF

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SUCCESSFACTORS, INC, a Delaware
corporation,

Plaintiff,

vs.

SOFTSCAPE, INC., a Delaware corporation,
and DOES 1-10, inclusive,

Defendants.

Case No. C08-1376 CW (BZ)

DISCOVERY MATTER

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION FOR
ADMINISTRATIVE RELIEF TO FILE
PORTIONS OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL AND THE
DECLARATION OF JEFFREY M.
RATINOFF IN SUPPORT THEREOF**

Judge: Honorable Bernard Zimmerman

Having considered Defendant Softscape, Inc.'s Motion for Administrative Relief to File Under Seal Declaration of Jeffrey M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion to Compel, the Court, and for good cause showing, IT IS HEREBY ORDERED THAT:

1. The following portions the Declaration of Jeffrey M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion to Compel ("Ratinoff Declaration") are HEREBY SEALED: Lines 18-19 on Page 1.

2. The following portions of Exhibit E to the Ratinoff Declaration are HEREBY

1 SEALED: Pages:Lines 111:22-112:15, 112:19; 154:19-25; 236:5-10, 236:16-25; 411:7-10; 412:6-
2 18; 413:11-25; 414:1-18, 414:24-25; 415:1-4, 415:7-18, 415:20-22; 416:17-22; and 418:20-25;

3 3. The following portions of Exhibit H to the Ratinoff Declaration are HEREBY

4 SEALED: Part of Page 1 as redacted by Softscape;

5 4. The following portions of Exhibit I to the Ratinoff Declaration are HEREBY

6 SEALED: Parts of Pages 2 and 4 as redacted by Softscape;

7 5. The following portions of Defendant's Opposition to Plaintiff's Motion to Compel
8 are HEREBY SEALED: Pages:Lines 14:6-9, 15:13-14, 15:19-24, 16:13-14, 16:20-17:1, 17:24-26.

9
10 IT IS SO ORDERED.

11 Dated: _____

12
13 _____
14 The Honorable Bernard Zimmerman
United States Magistrate Judge

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